



# Environmental Health Enforcement Policy 2022

## 1. Introduction

This Enforcement Policy will be applied by the Sevenoaks District Council's (the District Council) Environmental Health Team in relation to the services and duties it provides/undertakes within the District of Sevenoaks. It is distinct from any general Enforcement Policy of the District Council, which may apply to any other service provided by them.

In the event of any conflict between policies, this policy will take precedence.

## 2. Statement of Intent

The primary aim of the Environmental Health Team (EH Team) is to ensure compliance with the legislative framework within which the Environmental Health functions operate so that, residents, consumers, businesses, employees, individuals and the environment are protected.

Fair, proportionate, targeted and effective enforcement is essential to protecting the health, safety, wellbeing and economic interests of all concerned, and there is a range of tools available to the Environmental Health Team to achieve this.

Generally we will provide advice and support those seeking to comply and, at the same time, deal with those who choose not to comply, using proportionate action. The detail on how and when action may be taken is outlined in the body of this policy.

The EH Team must also have regard to the various general duties imposed on the partner authorities e.g. section 17 of the Crime and Disorder Act 1998. We are obliged to comply with the Human Rights Act 1998, so we will take its provisions into account when taking decisions relating to enforcement action.

This enforcement policy is a statement of how the EH Team will carry out its enforcement duties and what business and citizens in Sevenoaks can expect from our enforcement staff. Enforcement staff shall have regard to this policy and demonstrate how they have complied with it. This policy will be reviewed every two years.

### 3. Policy Scope

The relevant legislation must always be adhered to by an officer whilst carrying out all Environmental Health related enforcement and investigation work, such as:

- Human Rights Act 1998
- Regulatory Enforcement and Sanctions Act 2008
- Legislative and Regulatory Reform Act 2006
- Police and Criminal Evidence Act 1984
- Regulation of Investigatory Powers Act 2000
- Criminal Justice Act 2003
- Criminal Procedure and Investigation Act 1996
- Criminal Justice and Police Act 2001
- Equalities Act 2010
- Data Protection Act 2018

We are committed to providing an effective service with officers carrying out their duties in an equitable, proportional, practical and consistent manner. To achieve this we have adopted the principles of the following:

- The Department for Business, Innovation and Skills' (BIS's) Regulators Compliance Code.
- The Enforcement Concordat.
- Local Better Regulation's Priority Regulatory Outcomes.
- BIS's Code of Practice on Guidance on Regulation.
- Health and Safety Executive/Local Authorities Enforcement Liaison Committee's (HELA's) Guidance to Local Authorities on Priority Planning.
- HELA's Incident Selection Criteria Guidance.
- Local Government Regulation's Home Authority Principle.
- Local Better Regulation Office's Primary Authority Principle and Guidance.
- The Crown Prosecution Service Code for Crown Prosecutors (as amended.)
- The Food Law Code of Practice.
- Health and Safety Executive Enforcement Management Model (EMM).
- The Health and Safety Commission's Enforcement Policy Statement
- European Convention on Human Rights.

We will also comply with any statutory requirement placed upon us and seek to align our procedures with best practice, including any codes introduced subsequent to the adoption of this Policy.

The Policy applies to actions in relation to all of the legislation enforced by the EH Team. Enforcement action includes any action taken by officers aimed at ensuring that individuals or businesses comply with the law and goes beyond formal enforcement action such as prosecution.

#### **4. Departure from the Enforcement Policy**

All authorised officers in the Environmental Health will take this Policy into account when making enforcement decisions.

Any departure from the Policy will only occur in exceptional circumstances and then will be subject to justification after full consideration and authorisation by an officer with delegated power unless there is a demonstrable, significant and imminent risk to the public or environment in delaying enforcement.

Instances of non-compliance with this Policy will be recorded and reported directly to the Environmental Health Manager as soon as is practicable.

#### **5. General Principles**

Prevention is better than cure. Therefore, our role involves actively working with businesses and the public to advise on and assist with compliance. Where we consider that formal action is necessary, each case will be considered on its own merits. However, there are general principles that apply to the way each case must be approached. These are set out in this Policy.

The majority of cases involving regulatory matters will relate to businesses, however, there will be some cases put before the Courts that relate to individuals, particularly those involving statutory nuisance. These cases will be treated in the same way as those involving businesses and the general principles outlined around proportionality of action, for example where appropriate trying informal approaches, before resorting to formal action and the Courts, will be followed.

Enforcement decisions will be fair, independent and objective and will not be influenced by issues such as ethnicity or national origin, gender or gender identity, religion or belief, political views, disability, age or the sexual orientation of the suspect, victim, witness or offender. Such decisions will not be affected by improper or undue pressure from any source. Where applicable, we will take into account the views of any victim, injured party or relevant person to establish the nature and extent of any harm or loss, and its significance, in making the decision whether to take formal action.

This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary burdens. We recognise the positive impact that the Environmental Health can have on economic progress and growth in the local economy and see it as part of our role to encourage and support the growth of legitimate business activity within the legal framework provided by central government.

#### **6. Enforcement Principles**

The principles of good enforcement are set out within the Enforcement Concordat. The Environmental Health Team will seek to adhere to these principles at all times

#### **a. Transparency/ Openness**

We will provide information and advice in plain language on the rules that we apply and will disseminate this as widely as possible. We will be open about how we set about our work, including any charges that we set, consulting business, voluntary organisations, charities, consumers and workforce representatives. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

#### **b. Helpfulness**

We believe that prevention is better than cure and that our role therefore involves actively working with residents and business, (especially small and medium sized businesses), to advise on and assist with compliance.

We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice /information from us.

Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

#### **c. Accountability**

We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

#### **d. Proportionality**

We will minimise the costs of compliance for business by ensuring that any action we require is proportionate to the risks. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering action.

We will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

#### **e. Consistency**

We will carry out our duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency, including effective arrangements

for liaison with other authorities and enforcement bodies through schemes such as those operated by the . Local Authority National Type Approval Confederation (LANTAC).

#### **f. Targeting**

We will adopt an intelligence led approach to our interventions and enforcement actions, using systems, procedures and techniques that provide us with such intelligence. We will keep apprised of matters that are relevant to the sectors we regulate at a national, regional and local level and will closely work with our internal partners, other LAs and national enforcement agencies to share information and intelligence on important regulatory issues and enforcement matters.

### **7. Confidentiality of Complaints**

It is recognised that some customers may have concerns about reprisals from the subject of a complaint when providing information to the EH Team.

The EH Team will therefore seek to maintain the anonymity of a complainant wherever possible. In practice this means that a complainant's details will not be released to the subject of a complaint or other third party without the permission of a complainant or where there is a clear legally defined reason to do so.

When responding to requests for information about a case, care will be taken to redact or remove any personal information relating to a complainant.

The EH Team may share details of a complainant with other teams within the authority, subject to our published data sharing policy and appropriate controls contained within.

Data sharing policies are available at:

[https://www.sevenoaks.gov.uk/info/20044/transparency\\_and\\_freedom\\_of\\_information/383/privacy\\_notice\\_and\\_general\\_data\\_protection\\_policy/13](https://www.sevenoaks.gov.uk/info/20044/transparency_and_freedom_of_information/383/privacy_notice_and_general_data_protection_policy/13)

### **8. Officer Delegations**

Officers within the EH Team are delegated appropriate powers to undertake a wide range of statutory duties. Officers will only be delegated powers commensurate with their experience and role. Officers will be expected to undertake regular training in the application of legislation they enforce and to understand and adopt current good practice within the field.

### **9. Types of Intervention and Enforcement Carried Out by Environmental Health**

#### **Food Hygiene Inspections**

- Inspection of food premises, risk assessment, and rating
- Provision of informal advice and guidance
- Legal requirement of improvements

- Seizure of food and equipment
- Sampling
- Closure of businesses (where appropriate and necessary)
- Prosecution
- Undertaking works in default

#### Health and Safety

- Investigation of complaints
- Investigation of serious accidents/ H&S incidents
- Proactive inspection of activities identified by HSE as being of concern
- Licensing of skin piercing, tattooing etc
- Provision of Advice
- Safety Advisory Groups
- Legal requirement of improvements
- Prohibition of activities/ equipment (where necessary)

#### Nuisance Complaints (including noise, odour, accumulations of waste, rats etc)

- Inspection of premises (including residential)
- Noise or other types of monitoring (including the installation of equipment)
- Provision of advice
- Issuing of legal warnings/ notices
- Seizure of equipment
- Issuing of Fixed Penalty Notices
- Prosecution

#### Environmental Permitting

- Issuing of Environmental Permits including regular Inspection and risk assessment.
- Administration and collection of statutory charges/ fees
- Issuing of legal notices to require improvements
- Prosecution
- Revocation of permits

#### Private Water Supplies

- Risk assessment of Private Water Supplies
- Sampling of Private Water Supplies
- Issuing of notices to protect the safety of users
- Prosecution

#### Animal Welfare and Control

- Collection and administration of stray dogs
- Investigation of animal welfare complaints and anti-social behaviour involving animals.
- Licensing of animal activities including inspection, risk assessment and star rating.
- Licensing of Zoos and Dangerous Wild Animals

## 10. Advice and Guidance

We will provide general information, advice and guidance to make it easier for businesses and residents to understand and meet their obligations.

This will be provided promptly, in clear, concise and accessible language, using a range of appropriate formats and media. Information will cover all legal requirements relating to our regulatory activities, as well as changes to legal requirements. Where changes are of great significance, we will look at the best ways of informing businesses of the changes e.g. through newsletters, mail-shots or seminars.

We will provide targeted and practical advice through personal visits, telephone and promote self service via our website. We will try to maximise the accessibility and effectiveness of advice to ensure efficient use of resources and we will involve businesses in developing both the content and style of regulatory guidance to help ensure that it meets their needs.

When offering advice, we will clearly distinguish between statutory requirements and advice or guidance aimed at improvements above minimum legal standards. We seek to provide proportionate advice, the content of which will help achieve compliance but impose the minimum burden required on the business concerned. Advice will be confirmed in writing, a full typed report can be provided if requested.

Where a business or resident identifies a problem and seeks advice to remedy the situation, it will not normally trigger enforcement action. Where appropriate we will seek to support the remedial action to prevent future problems, however, we reserve the right to take enforcement action where applicable.

Generally, we will provide our advisory services free of charge however we reserve the right to charge a reasonable fee for services beyond the basic advice and guidance necessary to help ensure compliance. We would take account of the needs and circumstances of smaller businesses and others in need of help and support in deciding whether or not to charge. Charging will be in line with any guidance issued by the Local Better Regulation Office in relation to the Primary Authority principle and will be set out in the Fees and Charges schedule published annually by each Council on their website.

## 11. Inspection of Businesses

We will ensure inspections and other visits to businesses only occur in accordance with a risk assessment methodology, except;

- where visits are requested by businesses
- following receipt of complaints
- where and when we have received relevant intelligence.

We will focus our efforts on businesses where intelligence and risk assessment shows there is a higher likelihood of non-compliance or which pose a more serious risk to regulatory outcomes. Some processes by their nature present a greater risk to health or the environment, or due to their complexity, may make it more difficult to ensure compliance. These are the areas where we will focus our inspection resources.

When we visit or carry out inspections, we will give feedback to businesses to encourage and reinforce good practice. We will also share information about good practice amongst businesses, and with other regulators.

Where we and another regulator have a shared interest in a business we will work together to rationalise our activities to minimise the burden on the business, providing this is of benefit to the business and does not harm the standard of enforcement for either regulator.

We will also take account of the circumstances of small businesses, including any difficulties they may have in achieving compliance.

## **12. Primary Authority Partnership Scheme**

The EH Team recognises that where a business has entered into a Primary Authority Partnership, the primary authority may provide compliance advice and support and the EH Team will take such advice into account when considering the most appropriate enforcement action for it to take. It may discuss any need for compliance advice and support with the primary authority.

## **13. Investigations involving Residential Properties**

We will ensure inspections and other visits to residential premises only occur in accordance with a risk assessment methodology, except;

- where visits are requested by a resident themselves
- following receipt of complaints
- where and when we have received relevant intelligence to indicate a problem.
- At the request of other agencies
- As part of our legal duty to survey the district for statutory nuisances

When we visit or carry out inspections, we will give feedback to both complainants and alleged offenders to encourage and reinforce good practice. We will also share information about good practice with residents whenever possible.

Where we and another regulator have a shared interest in a residential property we will work together to rationalise our activities to minimise the burden on the individual, providing this is of benefit of that individual and does not harm the standard of enforcement for either regulator.

We will take account of an individual's circumstances, including any difficulties they may have in achieving compliance.



## **14. Information Requirements**

The EH Team does not routinely require large quantities of information from businesses or residents.

When determining what data we may require, we will consider the costs and benefits of data requests and

- Limit the data that we request to that which is either appropriate, or required by statute e.g. food registration, licensing applications etc.
- Minimise the frequency of collection and seek the information from other sources where relevant and possible

We will work with our fellow local regulators to minimise the information we request from businesses and residents, and we will seek to maximise our data sharing within the provisions of the Data Protection Act and General Data Protection Regulations. We will seek to use compatible collection methods to give consistency.

We will involve businesses and residents in vetting data requirements and form design for clarity and simplification. We will also ensure that, where possible, data can be returned electronically.

## **15. Powers of Entry**

Some legislation provides specific rights of entry to investigating officers.

The EH Team will ensure that all relevant officers are correctly authorised to carry out the functions of legislation they are empowered to enforce, that they are aware of their rights and limitations to enter land or premises, and can justify their decisions to enter land or premises.

Where an officer is unclear if they have a right to enter a premises they will not attempt entry until such time as their legal rights are established and clarified.

Officers will have regard to the impact of undertaking such rights of entry on an individual's human rights and will ensure that any entry is proportionate and justified.

Where legislation allows an authorised officer to bring other persons onto land or into a premises, they will only do so when there is justification to do so.

Officers will avoid whenever possible making multiple entries to the same property without clear and documented justification.

## **16. Enforcement Action**

Our experience shows that most businesses and people that we encounter will aim to comply with the laws that we enforce. We wish to assist this majority to comply and will seek to help them to do so wherever possible. However, in the interests of justice, it will be necessary for us to take legal action in response to in some cases of non-compliance. There are a number of options available to us in response to past non-compliance or in anticipation of potential future non-compliance.

## **17. Deciding What Enforcement Action is Appropriate**

In deciding what action to take in response to non-compliance or in anticipation of potential future non-compliance, consideration will be given to, among other criteria:

- The seriousness and effect of the offence;
- The previous history of the party concerned;
- Whether the offence was intentional, accidental or otherwise;
- The offender's attitude to the offence and whether he or she has shown remorse;
- The willingness of the alleged offender to prevent a recurrence;
- The consequences or potential consequences of non-compliance;
- The deterrent effect of a prosecution on offenders and others;
- Whether there is sufficient evidence to prove the offence,
- Whether it is in public interest, and
- The age, capacity or vulnerability of the offender.

In the main, a process of escalation will be used until compliance is reached. Exceptions may occur where there is a serious risk to public safety or the environment or the offences have been committed deliberately or negligently or involve deception, or where there is significant economic detriment.

## **18. No Action**

There will be circumstances where a contravention of legislation or law may not warrant action, or it may be inappropriate.

This may include minor technical breaches or non-compliance which have no material effect on public health or wellbeing and which are rectified immediately or where reasonable excuse/ justification is provided.

Details of any non-compliance (even when no action has been taken) shall be recorded and may be used to inform judgement on future enforcement action.

## **19. Informal Verbal or Written Advice**

We may give a business or resident an opportunity to rectify minor breaches of the law and/or less serious issues without the need for formal action.

We will, whenever possible clearly identify the nature of the breach or contravention, give advice on how to put this right (accepting that specialist expertise may sometimes be required) and specify a timescale in which this must be done. The time we allow will be reasonable and will take into account the seriousness of the contravention and the implication of the non-compliance.

Where the advice required is detailed, or there are potentially serious implications from the failure, the advice will normally be provided in writing. Failure to comply with informal advice could result in an escalation of enforcement action.

Whenever possible we will also provide advice on 'good practice'. Where this is the case we will ensure that we clearly distinguish between what must be done to comply with the law and what is recommended best practice.

## 20. Statutory Notices

We may serve statutory notices and orders under various acts that:

- Prohibit the sale or distribution of food where relevant provisions may have been breached
- Require a business or resident to take specific actions to remedy an identified problem
- Require a business or resident to desist from particular activities that may not comply with legal requirements
- Require any person to take action to ameliorate or stop nuisances being caused by their actions.

Notices may require immediate action where, for example, there are risks to public health or safety, an immediate risk of environmental damage or a serious nuisance. In other circumstances, a reasonable amount of time will be given, depending on the circumstances, to rectify the problem.

Certain notices allow works to be carried out in default (see XXXX)

In certain limited circumstances, for example under the provisions of food safety legislation, where an authorised officer is satisfied that there is an imminent risk of injury to health from the condition of the premises, the officer may serve notice to close a premises. This would be immediately followed by an application to a Magistrates court to confirm closure.

Failing to comply with a statutory notice can be a criminal offence.

Notices issued in respect of a premises may be affixed to the premises and/ or registered as local land charges,

All notices issued will contain details of any relevant 'Appeals' process that may be available to the recipient.

## 21. Fixed Penalty Notices (FPNs)

Some legislation allows Officers to use Fixed Penalty Notices as an alternative to taking an offender to court. They are normally appropriate for lower level/ minor offences and avoid the defendant gaining a criminal record.

Where legislation permits an offence to be dealt with by FPN we may (subject to evidential and public interest tests) choose to issue one on a first occasion, without issuing a warning.

They will be used in appropriate circumstances to give a fast and measured response to a situation. However a FPN will not normally be appropriate for a repeat offence.

Payment of a FPN does not provide immunity from prosecution in respect of similar or recurrent breaches. If a FPN is not paid the Environmental Health Team may commence criminal proceedings or take other enforcement action in respect of the breach.

FPNs will not be issued to persons under the age of 16 years.

Written notice may be given, withdrawing a penalty notice if it is considered that the FPN ought not to have been given.

## **22. Works in Default**

Where a person of business upon whom we have served a statutory notice fails to undertake the works required by that notice, we may act to complete the works ourselves. In determining whether to carry out works in default we will consider:

- The effects of not carrying out the work on the health safety and welfare of relevant persons (including those affected)
- The reason for the work both being carried out previously by the person responsible; and
- Whether the benefits justify the costs and the action poses the minimum burden necessary to achieve the objective

Where we undertake works in default we will seek to recover all reasonable costs that we have incurred by any means legally available to us. This may include placing a charge on a property or following other debt recovery procedures.

Works in default can be carried out either instead of a prosecution or in addition to a prosecution.

## **23. Seizure, Detention or Destruction**

Where legislation permits our officers may seize goods, equipment or documents. Our powers of entry search and seizure will be fully justified before use and Officers will consider if the necessary objectives can be met by less intrusive means.

In all cases authorised officers will

- Exercise their powers courteously and with respect for persons and property, and
- In circumstances where a warrant has been obtained and is appropriate only use reasonable force when it is considered necessary and proportionate to the circumstances.

## **24. Forfeiture Proceedings**

This procedure may be used where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to commit offences in the future. An application for forfeiture may be made to a Court following a prosecution or separately, as appropriate.

## **25. Refusal, Suspension, Review or Revocation of Licence or Approval**

The EH Team issues a number of licences and permits. We also have a role to play in ensuring that appropriate standards are met in relation to licences issued by other agencies. Most licences and permits include conditions which require the licence holder to take steps to ensure that they minimise their impact upon the community or environment and/ or protect public or animal health.

We may refuse, revoke, vary or suspend a licence or permit where we consider it necessary.

A 'licence' or 'permit' refers in this policy to all permissions or authorisations granted or potentially granted by the Environmental Health Team.

In all cases a decision to refuse, revoke vary or suspend a licence or permit will be made with consideration to:

- The legislative requirements and controls required to maintain the relevant licence or permit
- Statutory duties placed upon the Environmental Health Team to refuse, revoke, vary or suspend a licence or permit.
- The compliance history of the business/ operation
- The need to maintain a 'level playing field' for businesses
- The payment of licence or permit fees
- The public health risk of allowing the operation to continue

## **26. Court Orders**

In some circumstances the EH Team may seek a direction from the court (in the form of an order or an injunction) that a breach is rectified and/ or prevented from recurring. The court may also direct that specified activities be suspended until the breach has been rectified and/ or safeguards have been put in place to prevent further breaches.

Failure to comply with a court order constitutes contempt of court, a serious offence which may lead to imprisonment.

The EH Team is required to seek confirmation of some enforcement notices, providing the court with an opportunity to confirm the restrictions imposed by a notice. Otherwise the EH Team will usually only seek a court order if it has serious concerns about compliance with voluntary undertakings or a notice.

## **27. Informal Interviews**

As part of our evidence gathering process, an authorised officer may invite a complainant or alleged offender to attend an interview. Normally these will be held at Sevenoaks District Council.

Interviews may take place for the following reasons:

- To clarify an aspect of the case or for an authorised officer to share/ present evidence that has been collected.
- For the collection of witness statements (civil and criminal cases)
- As part of the evidence collection process.
- To allow an alleged offender to respond to an allegation (civil or criminal)

Where an interview is not in respect of a suspected criminal offence the requirements of PACE do not apply. However, for the benefit of clarity (for both the District Council and those being interviewed) we may seek to record the conversation. In these cases we shall provide a copy to the interviewee for their records.

## **28. Interviews under Caution**

Where an interview is to be conducted under caution we will make this clear to the interviewee in advance of the meeting.

There is no express legal requirement that a person suspected of having committed an offence must be interviewed under caution before any decision as to whether to prosecute is taken. However, we do have a duty to allow a suspect the opportunity to answer the allegations against them and give their own account before a decision on prosecution is made.

We will invite someone to an interview under caution if we believe there are grounds to suspect that they may have committed a criminal offence. This does not mean that we believe they are guilty or that we are intending to initiate a prosecution but instead that evidence we have obtained indicates that that person may be involved in the offence and able to assist with enquiries.

The purpose of the interview will give you the opportunity to provide an explanation of the events. However, if we find any evidence during the interview that you have committed an offence, you may be prosecuted.

Those who are requested to attend an interview are not obliged to attend, however this will not prevent use from taking further action as appropriate. If a interview is not attended we will consider the evidence we have and make a decision on further action without the benefit of the requested interviewee's own account.

If the offence is imprisonable, and the requested interviewee does not attend an interview voluntarily, they may be arrested by the police and the interview conducted by our officers at a police station.

Throughout the interview the attendee has rights and entitlements, including the right to silence, which will be explained at the start of the interview.

## **29. Simple/ Formal Caution**

Where public interest justifies, we will consider offering a Formal (Simple) Caution (or reprimand/ final written warning if the offender is under 18).

In offering a Formal Caution, we will take account of Home Office Guidelines in relation to the cautioning of offenders, and the Code for Crown Prosecutors.

Where an offender is under 18 and a formal approach is being considered, appropriate bodies such as the Youth Offending Team will be consulted.

A Formal Caution requires an admission of guilt on behalf of the offender, however there is no sentence and there is no recorded conviction. A Formal Caution will remain on record for a period of 2 years and may be cited in Court should a further offence be committed and prosecuted during that time.

### **30. Prosecution**

The commencement of a prosecution is the most serious response to an apparent incidence of non-compliance with the law.

Once an officer has completed his/ her enquiries, a case report will be submitted to a manager authorised to institute legal proceedings and who is independent to the investigation. This manager will decide, using the criteria below the most appropriate course of action.

The manager considering whether to authorise legal proceedings will take into consideration the requirements of the Code for Crown Prosecutors and other relevant codes or guidance before deciding whether or not to institute legal proceedings.

### **31. The Evidence Test**

The Authorising Manager will need to be satisfied that there is sufficient evidence to provide a realistic prospect of conviction against each defendant on each charge (i.e. that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged). In order to progress beyond the evidence test the authorising manager will consider the following:

- Have the legal 'points to prove' been considered and has evidence been submitted to address them?
  - Is the nature of the offence being prosecuted clear?
  - Is there clear evidence that legal notices were correctly served (if required)?
  - Is the case officer correctly authorised to prosecute the offence?
  - Is there evidence to demonstrate a breach of the offence being prosecuted?
- The volume/ nature of evidence available
  - Is the evidence presented in line with reasonable expectation of what with what could can be practicably obtained?- consideration should be given to the nature of the offence including any constraints which have been faced gathering evidence.
  - Are there corroborating evidence sources. - multiple evidence sources are
- The quality of the evidence available
  - Physical evidence (photographs, noise recordings, seized materials) are likely to carry greater weight
  - The reliability of witnesses- how compelling are the provided witness statements
  - Was the matter witnessed directly by an officer of the Environmental Health Team

- Has mitigation been provided by the alleged offender?
  - Was the alleged offender invited to interview? -did they attend?
  - Is the defence presented believable or considered a reasonable excuse.

Only when this evidential test has been satisfied will the public interest to proceed with the prosecution be considered.

### 32. The Public Interest Test

In addition to being satisfied that there is a realistic prospect of conviction, the authorising manager must be satisfied that there is a public interest to initiate a prosecution.

In deciding whether to commence a prosecution we will have regard to the Code for Crown Prosecutors and any other appropriate guidance contained within Codes of Practice or internal policies/ procedures. In general terms, this means that we may bring a prosecution when consideration of the evidence suggests that there is a realistic prospect of conviction and that it is in the public interest to do so. In making a determination we will have consideration of the following factors:

- The seriousness of the alleged offence.
  - The harm or potential harm caused
  - The environmental consequence of the offence
  - The financial gain from committing the offence
- The culpability of the offender
  - Did the offence result from a deliberate action or was it inadvertent.
  - Level of control that could reasonably be exercised to prevent the alleged offence from occurring.
- The previous history of the party concerned
  - We may have regard to information from partner agencies or other departments within either authority.
  - Have similar offences been committed in the past.
  - Have there been continued and persistent failures in the past.
- The likelihood of the defendant being able to establish a defence
- The reliability of important witnesses and their willingness to co-operate
- The willingness of the party being considered for prosecution to prevent a recurrence of the problem.
- The probable public benefit of a prosecution and the importance of the case
- Whether alternate action may achieve the same effect (i.e. simple caution etc)
- Any excuse or explanation provided by the alleged offender.
- The ability of the individual to comprehend the seriousness of the prosecution against them, for example due to their age or vulnerability.
- The desired outcome of a prosecution
  - Some actions and enforcement options are only available following prosecution (i.e. application for a Criminal Behaviour Order)

### 33. Referral to Legal Services

Once a decision to instigate a prosecution has been taken, the matter shall be referred without undue delay to the relevant authorities Legal Services, ensuring it is presented in



the appropriate format with the correct authorising signatures in accordance with the internal legal procedure.

#### **34. Sharing of Intelligence Regarding Enforcement**

Where appropriate, enforcement activities within the Environmental Health or Licensing activities will be coordinated with other regulatory bodies and enforcement agencies to maximise the effectiveness of any enforcement.

The Council will respect advice that has been provided by other regulators and enforcement agencies.

Where an enforcement matter affects a wide geographical area beyond the District Council's boundaries, or involves enforcement by one or more other local authorities or organisations, where appropriate all relevant authorities and organisations will be informed of the matter as soon as possible, and all enforcement activity coordinated with them

#### **35. Data Protection Act 2020**

The Environmental Health Team may process personal data necessary to its statutory duties or otherwise in its public tasks. Data will be retained in accordance with the 'Environmental Health Information Asset Register' but ordinarily will be retained for 7 years from last use unless exceptional circumstances apply.

After use data will be securely disposed.

For further details about how personal data is processed and your rights, please see our Privacy Notice at [www.sevenoaks.gov.uk/privacy](http://www.sevenoaks.gov.uk/privacy).

#### **36. Proceeds of Crime Applications**

Where we consider that assets belonging to an individual may have been obtained through criminal activities **and** the individual has financially benefitted from committing an offence, we will consider the use of powers given to us by the Proceeds of Crime Act 2002.

Upon conviction of an offender, an application may be made to recover the financial benefit that an offender has obtained from any criminal conduct.

#### **37. Regulation and Investigatory Powers Act 2000 (RIPA)**

Many of the activities undertaken by the Environmental Health Team do not fall within the scope of RIPA. Nevertheless, we shall abide by the principles of the District Council's surveillance policies and ensure that whenever possible our monitoring activities are undertaken overtly. In practice, we will notify alleged offenders that they may be monitored (including using technical equipment) at the start of our investigation and then at appropriate intervals (normally every 6 months).

Occasionally, it may be necessary to undertake monitoring without prior notification to the alleged offender. For example:

- Where violence has been threatened against a complainant
- Where prior notification may compromise the ability to collect evidence
- Where monitoring is undertaken reactively
- Where there is insufficient time to notify an alleged offender

We will comply with RIPA in all occasions where it applies.

### **38. Protection of Human Rights**

The EH Team will apply the principles of the European Convention on Human Rights in accordance with the Human Rights Act 1998

Authorised offices will, accordingly, ensure that respect for human rights is at the core of their day-to-day work. This covers all aspects of the District Council's activities including: -

- drafting Rules and Regulations;
- internal staff and personnel issues;
- administrative procedures;
- decision making;
- policy implementation;
- interaction with members of the public.

### **39. Equalities, Vulnerable Persons and Minority Groups**

The Environmental Health Team will adhere to the public sector equality duty (the equality duty). Specifically we will:

- Seek to ensure everyone is able to access our service. Where necessary make adjustments to the way we deliver our service so that it is accessible for all.
- Seek to provide information and advice in clear and suitable ways
- Regularly review our processes and procedures to ensure that meet our customers needs
- Seek to understand the needs of all our customers by listening and responding to their views
- Seek to make good decisions by taking into account a range of views, information, evidence and up to date case law. We will be accountable for the decisions we make.

For further information about the District Council's Equality Policy and Statement can be found at: [Policies, strategies and plans - Equality policy statement and objectives | Sevenoaks District Council](#)

#### **40. Enforcement in SDC Premises and Contracted Services/ Enforcement on Council Premises, or at Events Organised by the Council**

The EH Team cannot legally enforce against matters resulting from the actions of Sevenoaks District Council. Where infringements on premises owned by, or at events organised by the Council are identified, the matter will be formally notified to the appropriate Chief Officer.

If the matter relates to health and safety matters then the Health and Safety Executive will be notified. If the potential breaches of the law are the responsibility of contractors employed by the Council, enforcement action will be taken against the contractor in the same way as in other cases not involving the Councils

#### **41. Standards and Accountability**

We will, in consultation with businesses and other interested parties, set and publish on the District Council's website; clear standards and targets for our service and performance. These will include:

- Regulatory outcomes (e.g. proportions of businesses that comply);
- Performance standards for contact with residents, visitors and businesses;
- A commitment to ensuring costs to businesses of regulatory interventions are proportionate; and
- A commitment to dealing with any negative perceptions of businesses and other interested parties relating to these issues.

We will create effective consultation and feedback opportunities to ensure we have continuing cooperative relationships with businesses and other interested parties. We will ensure our officers provide courteous and efficient services to businesses. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. We will enable our officers to interpret and apply relevant legal requirements and ensure that they enforce requirements fairly and consistently between like-businesses in similar situations. We will take account of comments from businesses and other interested parties regarding the behaviour and activity of our staff.

#### **42. Working with External Agencies and Other Regulators**

We will work with other agencies to support their regulatory activities and may share information with them as necessary to support their work.

Sharing will be subject to information sharing agreements published by Sevenoaks District Council.

### **43. Local Land Charge Register**

We may provide details of legal notices, charges or other relevant information to our land charges team (particularly where an issue relates to an ongoing issue/ defect associated with a premises).

This information may be declarable on a property search.

### **44. Complaints**

Anyone wishing to complain about enforcement action should initially contact the Environmental Health Manager by telephone on 01732 227000, by email at [environmental.health@sevenoaks.gov.uk](mailto:environmental.health@sevenoaks.gov.uk) or in writing to the following address:

The Environmental Health Manager  
Sevenoaks District Council  
Council Offices  
Argyle Road  
Sevenoaks  
Kent  
TN13 1HG

Please note that a complaint to the Environmental Health Manager does not supersede any appeal mechanisms contained within statutory legislation and a complainant should ensure that where they wish to do so they separately lodge an appeal with the appropriate body as specified in the documentation provided by Environmental Health.

If you are unclear how you lodge an appeal please contact the investigating officer who will explain how to do this.

### **45. Publicity**

We will normally publicise details of any convictions, which could act as a deterrent to others, or where there is reasonable expectation of public interest.

Where appropriate the media will be provide with factual information about the charges which have been laid before the courts, any pending formal action and any enforcement action already taken. We may disclose details of sentences imposed.

We also maintain a number of statutory registers which detail the enforcement action we have undertaken.

### **46. Review of the Enforcement Policy**

This policy will be reviewed every two years

**47. Appendix A- Map of the Sevenoaks District Council Area**